

BEFORE THE DIRECTOR
OF THE
OFFICE OF CAMPAIGN FINANCE
D.C. BOARD OF ELECTIONS AND ETHICS
2000 14TH STREET, N.W., SUITE 420
WASHINGTON, D.C. 20009
(202) 671-0550

IN THE MATTER OF

**The District of Columbia Sports and
Entertainment Commission
Robert F. Kennedy Memorial Stadium
2400 East Capitol Street, N.E.
Washington, D.C. 20003**

DATE: November 5, 2003

DOCKET NO.: Investigation 03-02

ORDER

Statement of the Case

Upon inquiry of the Office of Campaign Finance (OCF), it is alleged, pursuant to the District of Columbia Campaign Finance Reform and Conflict of Interest Act of 1974, as amended (the Act), D.C. Official Code §§1-1101.01 et seq. (2001 Edition), that John Richardson, Esq., (Richardson) former chairperson of the District of Columbia Sports and Entertainment Commission (Sports Commission), may have violated the conflict of interest statute by allegedly failing to disclose a required financial interest from 2001 on his 2002 Financial Disclosure Statement (FDS); and, by issuing certain checks, by the Sports Commission, for non-governmental purposes.

Issues

1. Whether Richardson failed to disclose a required financial interest on his 2002 FDS, in violation of D.C. Official Code §1-1106.02, when he did not reveal the law firm of Crispin and Brenner (C&B) of Washington, D.C., as a business entity transacting business with the District government in which he served in a formal capacity or affiliation, because the Sports Commission contracted with C&B to undertake a legal matter in 2001 and Richardson allegedly served in a formal capacity or affiliation therewith?
2. Whether Richardson took official action or made a decision that directly or indirectly affected his financial interests, in violation of D.C. Official Code §1-1106.01(g), when C&B was contracted by the Sports Commission to represent the Sports Commission in a legal matter in 2001?
3. Further, if Richardson failed to disclose a required financial interest of C&B on his 2002 FDS, in violation of D.C. Official Code §1-1106.02, whether Richardson failed to timely modify his FDS to reflect thereon?

4. Whether Richardson ordered or participated in any official action which adversely affected the confidence of the public in the integrity of the District government, in violation of §1800.1, when he authorized the issuance of certain checks to the campaign committee of former Atlanta, Georgia mayor, Bill Campbell, and Major League Baseball, for tickets to the Major League Baseball All-Star Game in 2000?

Background

This matter came before OCF as an internal query due to a series of news articles issued in April 2003 by the Washington Post concerning alleged irregularities within the Sports Commission. Therein, it was alleged that Richardson used a law firm with which he was formally associated to handle a legal matter for the Sports Commission in 2001; and, that under his aegis, the Sports Commission was illegally contributing monies to the political campaign of then Mayor Campbell and to Major League Business.

Accordingly, from May through July 2003, OCF solicited information from 11 current and former members of the Sports Commission and C&B surrounding the alleged events. Upon receipt and verification of the responses, it was determined by OCF that the majority of the members were aware of the events, and did not remember the details, or did not have any knowledge of thereof.

However, based upon information received from Richardson, Robert D. Goldwater (Goldwater), immediate past President and Executive Director of the Sports Commission, and C&B, OCF initiated a full investigation into this matter on July 25, 2003. Specifically, OCF had reason to believe that Richardson misused his position when C&B was retained and paid more than \$29,000 to represent the Sports Commission in a discrimination suit filed by a former employee thereof and that Sports Commission monies may have been used for non-governmental purposes.

Whereupon, on or about August 5, 2003, OCF dispatched additional requests for more detailed information to Richardson, C&B, and former Sports Commission members. Responses were due and received by August 13, 2003. By letter of August 11, 2003, OCF requested Richardson to appear for an informal hearing on August 26, 2003, at 10:00 a.m., to more fully respond to the allegations against him and the Sports Commission. Richardson complied and appeared thereon.

The scope of the OCF investigation, which was conducted until October 17, 2003, encompassed reviewing and verifying all submitted information, in light of intra-jurisdictional discovery and the OCF and Sports Commission statutes and personnel regulation; research; and in-house meetings.

Relevant Statutory and Regulatory Provisions

D.C. Official Code §1-1106.01(g) reads, "Any public official who, in the discharge of his or her official duties, would be required to take an action or make a decision that would affect directly or indirectly his or her financial interests or those of a member of his or her

household, or a business with which he or she is associated or must take an official action on a matter as to which he or she has a conflict situation created by a personal, family or client interest, shall:

“(1) Prepare a written statement describing the matter requiring action or decision, and the nature of his or her potential conflict of interest with respect to such action or decision;

“(2) Cause copies of such statement to be delivered to the District of Columbia Board of Elections and Ethics [(Board)];

“(3) [I]f he or she has no immediate superior, except the Mayor, he or she shall take such steps as the Board prescribes through rules and regulations to remove himself or herself from influence over actions and decisions on the matter on which potential conflict exists[.]”

D.C. Official Code §1-1106.01(h)(3) defines “business with which he or she is associated” to mean “any business of which the person or member of his or her household is a director, officer, owner, employee, or holder of stock worth \$1,000 or more at fair market value, and any business which is a client of that person.”

D.C. Official Code §1-1106.02 provides that members of the Sports Commission are required to “file annually with [OCF an FDS] containing a full and complete statement of [inter alia] the name of each business entity (including sole proprietorships, partnerships, and corporations) transacting any business with the District of Columbia government (including any of its agencies, departments, boards, commissions, or educational bodies) in which such person (or his or her spouse, if property is jointly titled). . .serves as an officer, director, partner, employee, consultant, contractor, or in any other formal capacity or affiliation”[; and, that i]nformation supplied pursuant to this subsection shall be modified by the filer within 30 days of any changes therein, and failure to inform [OCF] of such modifications is deemed to be a willful violation of this filing requirement.”

D.C. Official Code §3-1401(a) reads, in part:

“(a) The Council of the District of Columbia hereby finds there is a need to combine in one entity the supervision and control of sporting, entertainment, and recreational activities in the District of Columbia, and hereby establishes a Sports and Entertainment Commission as a corporate instrumentality of the District for the purposes of:

“(1) Promoting, developing and maintaining the District as a location for hosting sporting and entertainment events [and]

“(3) Consolidating the District’s efforts in promoting and managing sporting events and entertainment.”

D.C. Official Code §3-1401(d) reads, “The Council determines that such Sports and Entertainment Commission shall be given authority to generate funds from private and public sources to further purposes of this chapter.”

D.C. Official Code §3-1403 reads, in part:

“There is established as an independent authority of the District government a District of Columbia Sports and Entertainment Commission. The Sports and Entertainment Commission is created as a corporate body and instrumentality of the District and is created for the purposes of:

“(1) Promoting the District as a location for holding sporting events which will enhance the District’s economic development through, among other things, tourism, job opportunities, entertainment, business development, and national and international exposure;”

...

“(5) Promoting and marketing sports events in the District and participation in such sports events, including, but not limited to, boxing, wrestling, martial arts, track and field, gymnastics, basketball, and other matches, contests, exhibitions, and showings, professional as well as amateur, of any kind or nature; and

“(6) Owning and operating professional sports franchises in the District.”

Pursuant to 3 D.C.M.R. §3709.1, “The Director may institute or conduct an informal hearing on alleged violations of the reporting and disclosure requirements, prescribed by the Act and Chapters 30-37 of this title.”

Pursuant to 3 D.C.M.R. §3711.1, “Upon a determination. . .that a violation has occurred, the Director may ministerially impose fines upon the offending party[.]”

Pursuant to 3 D.C.M.R. §3711.2, “Fines shall be imposed as follows:

...

“(z) Failure to disclose potential conflicts of interest 2000[.]”

“Formal” is defined as “[r]elating to matters of form[.]” Black’s Law Dictionary 586 (5th Ed. 1979)

“Form” is defined, in part, as “[a] model or skeleton of an instrument to be used in a judicial proceeding or legal transaction, containing the principal necessary matters, the proper technical terms or phrases and whatever else is necessary to make it formally correct, arranged in proper and methodical order, and capable of being adapted to the circumstances of the specific case.” Id.

DPM §1800.1 reads, “Employees of the District government shall at all times maintain a high level of ethical conduct in connection with the performance of official duties, and shall refrain from taking, ordering or participating in any official action which would adversely affect the confidence of the public in the integrity of the District government.”

Summary of Evidence

Attached hereto is Richardson’s FDS for calendar year 2001. Therein, he fails to disclose the allegedly required disclosure of C&B under Question Number Three (3), “Please

provide the following information with respect to each business entity transacting any business with the District Government (including sole proprietorships, partnerships and corporations) in which you (or your spouse, if property is jointly titled) serve as an officer, director, partner, employee, consultant, contractor or in any other formal capacity or affiliation.” Exhibit (Exh.) A.

OCF received Richardson’s verified letter on May 30, 2003. Exh. B. He advised OCF to seek information about the checks from Robert D. Goldwater (Goldwater), the President and Executive Director of the Sports Commission, because of his access to the files. Richardson also explained therein how C&B came to be involved in the personnel matter, i.e., through informal discussions between him and a C&B associate, and the fact that he would not have disclosed C&B on his 2001 FDS because he did not benefit financially from the business transacted with the District.

C&B responded to OCF’s query on July 10, 2003. Exh. C. C&B averred that in 2001, Richardson was an independent contractor working out of its offices and that he is billed for, inter alia, office space and supplies, that he was not a C&B employee and that his revenues were separate from C&B revenues, that he did not solicit clients or business for C&B, and that C&B did not remit any portion of its regularly established rate for the Sports Commission matter to Richardson.

A letter from Goldwater was received on July 18, 2003. Exh. D. He provided copies of three (3) checks – two (2) totaling \$900.00 to Major League Baseball and one (1) for \$1116.00 to the Campaign to Re-elect Bill Campbell. Goldwater stated that the Sports Commission sought to exercise its statutory authority to “promote the District as a location for holding sporting events” and to attract a major league baseball franchise to the District. In his opinion, purchasing the tickets to the All-Star Game was within the scope of the Commission’s purpose and authority; and, to receive those tickets, checks were issued to Major League Baseball and the Campaign to Re-elect Bill Campbell, to effectuate its goal.

Joseph B. Gildenhorn (Gildenhorn), a member of the Sports Commission, commented in his August 13, 2003 letter, in response to a request for information from OCF, that Richardson presented the personnel matter to the Sports Commission at a regular board meeting and had indicated that a C&B attorney with experience in the matter “would be willing to handle the case,” and that Richardson informed them that he would not receive any financial remuneration whatsoever in this regard. Exh. E. He said that the Sports Commission voted unanimously to allow C&B to deal with the matter and that Richardson abstained from the vote.

During the informal hearing on August 26, 2003, Richardson appeared and answered questions from the staff of the OCF Office of the General Counsel. Exh. F. His responses to questions about his practice within the C&B offices and his explanation about the All-Star Game tickets were consistent with information received heretofore. Contrarily,

Richardson was questioned on data which may have indicated that his relationship with C&B was more than that of an arrangement of shared office space. He was confronted with C&B letterhead bearing his signature and internet notices acknowledging a relationship between him and C&B. He responded that these were mistakes.¹

Findings of Fact

Having reviewed the allegations and the entire record in this matter, I find:

1. In early 1999, Richardson was a member of a K Street law firm which was dissolving and all partners, of whom Richardson was one, were moving into different directions, with Richardson deciding to be a sole practitioner. Exhs. B & F, at 16-20.
2. Richardson had been associated with the principals of C&B when he was in practice, for 20 years, with another firm prior to the K Street law firm; and, opted to move his practice into the C&B offices. Exhs. B & F, at 16-24.
3. Richardson was asked by C&B to actually join the practice; but, Richardson declined because he was newly established as a sole practitioner and he was working with other law firms. Id., Exh. C.
4. Richardson and C&B orally agreed that rental would be based on a cost-sharing arrangement, such that as C&B's rent increases, Richardson's rent increases; that he would pay a portion of the phone and internet services; that he paid C&B for the use of office supplies; and, that he received all of the profits from his work. Id., Exh. C.
5. Richardson occasionally used C&B letterhead and was listed on the Internet with Martindale-Hubbell and the Department of Transportation, as being associated with C&B, with the knowledge of the principals of C&B. Exh. F at 36-42.
6. At the same time, Richardson, as chairperson of the Sports Commission, was a public official required to file an FDS with OCF. Exh. A.
7. The Sports Commission is a semi-public and a semi-private entity doing business in the District of Columbia to, inter alia, encourage major league baseball in the nation's capitol. Exh. D.
8. In 2000, under Richardson's aegis, the Sports Commission purchased a block of tickets to the All-Star Game in Atlanta, Georgia, and paid for said tickets with three (3) checks – two (2) of which were written to Major League Baseball and

¹ Martindale-Hubbell, a national listing of lawyers and their affiliations, represented that Richardson was C&B "Of Counsel." Richardson advised OCF by letter dated August 28, 2003, that he was attempting to correct their misapprehension.

one (1) of which was written to the re-election campaign committee for then Mayor Bill Campbell. Id.

9. Tickets were purchased through the entities of Major League Baseball and the re-election campaign committee for then Mayor Bill Campbell. Id.
10. The check payable to the re-election campaign committee for then Mayor Bill Campbell was made payable to the Committee to Re-elect Bill Campbell, at the instruction of Mayor Campbell's office, in order to reimburse the Committee for its prior purchase of All-Star Game tickets; and, this is so noted on the supporting documentation of the check. Id.
11. As chairperson of the Sports Commission, Richardson sought to provide the Sports Commission with the ability to perform its job, i.e., to purchase tickets for District officials to attend the All-Star Game and lobby Major League Baseball officials for a team in the nation's capitol. Id.
12. From January 1 through December 31, 2001, Richardson served as chairperson of the Sports Commission; and in 2002, he duly executed an FDS in his status thereof. Exh. A.
13. Sometime during 2001, the Sports Commission was without an executive director and a general counsel, when it was confronted with a personnel issue, a complaint of discrimination; and, as chairperson and a lawyer, Richardson initially handled the matter, as allowed by the procurement regulations of the Sports Commission. Exh. F at 25.
14. Because of Richardson's acquaintances with the C&B principals and his congeniality therewith, he found himself, from time to time, discussing cases and sharing ideas therewith. Exhs. A & F.
15. Richardson conferred with a C&B associate about the Sports Commission complaint. Exh. F at 25-27.
16. At some point, this complaint was filed with the Equal Employment Opportunity Commission against the Sports Commission and Richardson believed that a different level of expertise was required for the Sports Commission to resolve the matter. Id. at 29.
17. Richardson discussed his concern about the complaint with members of the Sports Commission in a meeting; and, he revealed that he had consulted with a C&B associate on the matter who had, without encouragement from him, preliminarily researched the matter. Id. at 32.

18. After some deliberation, the members of the Sports Commission, in accordance with its procurement regulations, voted unanimously to employ C&B to handle the discrimination matter; and, Richardson recused himself from the deliberation and the vote. Id.
19. C&B served the Sports Commission by representing it in the EEOC discrimination suit and charged a standard rate, which garnered \$29,344.02 in total fees for C&B. Id.
20. Richardson did not receive any revenues from the Sports Commission or C&B with regard to C&B's defense of the Sports Commission in the EEOC discrimination suit. Id.

Conclusions of Law

Based upon the record, in its entirety, and the evidence, I therefore conclude:

1. Richardson was a public official of the District of Columbia government and subject to the Act's financial disclosure statute at D.C. Official Code §1-1106.02; and, the enforcement provisions of the employee conduct regulations at DPM §1800 et seq.
2. In 2001, C&B was "a business entity transacting business with the District government," pursuant to D.C. Official Code §1-1106.02, when the Sports Commission contracted with C&B to represent the agency before the EEOC in a discrimination suit brought by a Sports Commission employee.
3. Richardson was not required to reveal his relationship with C&B on his 2001 FDS, under Question Number Three (3), where he was required to disclose the name of each business entity transacting any business with the District of Columbia government, including its commissions, in which he served "as an officer, director, partner, employee, consultant, contractor, or in any other formal capacity or affiliation," pursuant to D.C. Official Code §1-1106.02, because Richardson was a sole practitioner, sharing space, supplies, and Internet and phone services with C&B, under an oral agreement therewith, notwithstanding his use of C&B letterhead, and he did not receive any revenues from C&B's contract with the Sports Commission, or any other client.
4. Richardson did not violate D.C. Official Code §1-1106.02(g) because C&B is not a "business with which he or she is associated, " pursuant to D.C. Official Code §1-1106.01(h)(3), i.e., Richardson was not a director, officer, owner, or employee of C&B; or, holder of C&B stock worth \$1,000 or more at fair market value, and C&B was not his client.

5. The Sports Commission is an “independent authority of the District government,” pursuant to D.C. Official Code §3-1403, created to, inter alia, “[consolidate] the District’s efforts in promoting and managing sporting events and entertainment,” in accordance with D.C. Official Code §3-1401(a)(3).
6. The business of the Sports Commission, codified at D.C. Official Code §§1-1401 et seq., as executed by the chairperson and its members, is government business.
7. Richardson did not violate DPM §1800.1 when he and members of the Sports Commission authorized the issuance of certain checks to the campaign committee of former Atlanta, Georgia mayor, Bill Campbell, and Major League Baseball, for tickets to the Major League Baseball All-Star Game in 2000 for District government officials to attend said game and lobby officials for a team in the nation’s capitol because the Sports Commission was engaged in District government business.
8. Richardson did not violate DPM §1800.1 when members of the Sports Commission deliberated and unanimously voted to employ C&B to represent the Sports Commission before EEOC on a personnel matter because Richardson recused himself from said actions.

Recommendation

I hereby recommend the Director of the Office of Campaign Finance (Director) to dismiss this matter. Notwithstanding, had Richardson remained chairperson of the Sports Commission, it would have been my recommendation that the Director advise the Mayor of the District of Columbia to inform Richardson that, in addition to the procurement rules of the Sports Commission, to become closely familiar with the provisions of the DPM.

Date

Kathy S. Williams
General Counsel

ORDER OF THE DIRECTOR

IT IS ORDERED that this matter is hereby dismissed.

IT IS FURTHER ORDERED that had Richardson remained chairperson of the Sports Commission, I would have advised the Mayor of the District of Columbia to inform Richardson that, in addition to the procurement rules of the Sports Commission, to become closely familiar with the provisions of the DPM.

Date

Cecily E. Collier-Montgomery
Director

SERVICE OF ORDER

This is to certify that I have served a true copy of the foregoing Order.

Rose Rice
Legal Assistant

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cc: The Honorable Anthony A. Williams
Mayor, District of Columbia

The Honorable Linda Cropp
Chairperson, District of Columbia
City Council

The Honorable Vincent Orange
Ward 5 Member, City Council

NOTICE

Pursuant to 3 D.C.M.R. §3711.5 (1999), any fine imposed by the Director shall become effective on the 16th day following the issuance of a decision and order, if the respondent does not request an appeal of this matter. If applicable, within 10 days of the effective date of this order, please make a check or money order payable to the D.C. Treasurer, c/o Office of Campaign Finance, Suite 420, 2000 14th Street, N.W., Washington, D.C., 20009.